

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	
<b>In re</b>	: <b>Chapter 11</b>
<b>REFCO, INC., et al.,</b>	: <b>Case No. 05-60006 (RDD)</b>
<b>Debtors.</b>	: <b>(Jointly Administered)</b>
-----X	
<b>AXIS REINSURANCE COMPANY,</b>	:
	:
<b>Plaintiff,</b>	:
	:
<b>v.</b>	: <b>Adv. Proc. No. 07-01712 (RDD)</b>
	:
<b>PHILLIP R. BENNETT, LEO R. BREITMAN,</b>	:
<b>NATHAN GANTCHER, TONE GRANT,</b>	:
<b>DAVID V. HARKINS, SCOTT L. JAECKEL,</b>	:
<b>DENNIS A. KLEJNA, THOMAS H. LEE,</b>	:
<b>SANTO C. MAGGIO, JOSEPH MURPHY,</b>	:
<b>RONALD L. O'KELLEY, SCOTT A. SCHOEN,</b>	:
<b>PERRY ROTKOWITZ, GERALD SHERER,</b>	:
<b>WILLIAM M. SEXTON, PHILIP SILVERMAN,</b>	:
<b>ROBERT C. TROSTEN, AND DOES 1 TO 10,</b>	:
	:
<b>Defendants.</b>	:
-----X	

**ORDER DISMISSING THE COMPLAINT  
OF AXIS REINSURANCE COMPANY**

Upon the motion (the "Motion"), dated July 12, 2007, of Defendants Leo R. Breitman, Nathan Gantcher, David V. Harkins, Scott L. Jaeckel, Thomas H. Lee, Ronald L. O'Kelley, and Scott A. Schoen (the "Director Defendants"), for an order dismissing the Complaint, dated May 23, 2007, of Axis Reinsurance Company ("Axis") pursuant to Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, as more fully set forth in the Motion; and the Court having jurisdiction to consider and determine the Motion pursuant to 28 U.S.C. §§ 157, 1334 and 2201; and due notice of the Motion having been provided; and upon all pleadings filed with this Court, and the hearing held before the Court on August 30, 2007 (the "Hearing"); and it appearing that the relief requested is appropriate; and all objections to the relief requested having

been overruled by the Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor for the reasons stated by the Court on the record of the Hearing:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. Applying New York choice of law rules, the Court concludes that New York law applies to the Axis directors and officers liability insurance policy referenced in the Complaint, the interpretation and application of the policy, and the dispute raised by the Complaint.

B. Under New York law, a declaratory judgment action commenced by an insurer seeking a determination of coverage under an insurance contract should be dismissed without prejudice or stayed where there is a substantial overlap of the underlying factual issues in such coverage determination action and factual issues that will be adjudicated in a pending underlying tort action or criminal proceeding.

C. There is substantial overlap of the factual issues raised in this coverage determination action commenced by Axis and the underlying tort and criminal proceedings referenced in the Complaint pending before the United States District Court for the Southern District of New York.

NOW, THEREFORE, It Is Ordered that:

1. The Motion is granted in all respects.
2. The Axis Complaint filed in the above-captioned adversary proceeding is dismissed, without prejudice.

Dated: August 31, 2007  
New York, New York

---

/s/ Robert D. Drain  
United States Bankruptcy Judge